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WOMEN AND THE LAW

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I INTRODUCTION

WOMEN RIGHTS as a topic assume centre stage in contemporary global debates. There is no dearth of law in India to protect the rights of women. However, women in India continue to face manifold problems including violent victimization through rape, acid throwing, matrimonial cruelty, child marriage, dowry death *etc*. The present survey unfolds several issues with reference to women which have reached the higher judiciary in the year 2014: Domestic violence, dowry death, rape and gang rape, compensation and rehabilitation of rape victims, gender inequality in workplace, insensitivity of the society, irresponsibility of police/ prosecution and so on. The present survey of important cases in the relevant field shows that the court is alive, conscious, sensitive and active in protecting the rights of women.

II MARRIAGE AND DIVORCE

Post-divorce maintenance for Muslim woman

In a significant verdict in *Shamim Bano* v. *Asraf Khan*[1] the Supreme Court held that a Muslim woman will be entitled to maintenance from her husband even after divorce. The court considered the questions (i) whether the appellant's application for grant of maintenance under section 125 of the Cr PC is to be restricted to the date of divorce and, as an ancillary to it because of filing of an application under section 3 of the Muslim Woman (Protection of Rights on Divorce) Act, 1986, after the divorce for grant of *mahr* and return of gifts would disentitle the appellant to sustain the application under the said section; and (ii) whether regard being had to the present fact situation, as observed by the high court, the consent under section 5 of the Act was an imperative to maintain the application. The Supreme Court bench held that Shamim was entitled to maintenance even after divorce. It remitted the matter back to the trial court for fresh disposal. The court held that a divorced Muslim woman who has not remarried and who is not

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1 2014 (2) Crimes 234 (SC).

able to maintain herself after the *iddat* period can proceed as provided under section 4 of the Act against his relatives, who are liable to maintain her. Even when an application has been filed under section 3 of Muslim Woman (Protection of Rights on Divorce) Act 1986 the magistrate has power to grant maintenance in favour of divorced Muslim woman and the parameters and the considerations are the same as stipulated in section 125 of the Cr PC.

After this judgment, now Muslim husband is liable to make a reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. His liability, arising from section 3 of the Muslim Women (Protection of Rights on Divorce) Act to pay maintenance, is not confined to the *iddat* period.

Conflict between conclusive proof envisaged under law and proof based on scientific advancement

In *Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*[2] the Supreme Court held that although section 112 of Evidence Act raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable and the latter must prevail over the former.

Since the marriage between respondent No. 1 (wife) and appellant (husband) was subsisting at time of birth of respondent No. 2 (girl child), under section 112 it was conclusively proved that the child is daughter of the appellant. The appellant was also asked to pay maintenance. However, the DNA test in no uncertain terms suggested that the appellant is not biological father of the child. Hence, the apex court held that the appellant cannot be compelled to bear fatherhood of child, when scientific report proves to the contrary. When there is conflict between conclusive proof envisaged under law and proof based on scientific advancement, such as DNA test, accepted by world community the latter must prevail over the former. Interest of justice is best served by ascertaining truth and court should be furnished with best available science and may not be left to bank upon presumptions unless science has no answer to facts in issue.

Reversal of decree for restitution of conjugal rights by granting divorce

The case *Malathi Ravi* v. *B V Ravi*[3] was initiated by the husband for dissolution of marriage. Whereas the family court by granting decree for restitution of conjugal rights declined to grant divorce, the high court granted divorce. The high court has found that the wife had no intention to lead a normal marital life and the marriage has irretrievably been broken down. On appeal, the Supreme Court categorically found that there was mental cruelty from the wife and hence the husband is entitled for divorce. Originally, the dissolution of marriage was sought on the ground of desertion alone. However, the apex court observed that the issue of mental cruelty should be addressed to by the apex court for the sake of doing complete justice. The court said that "it is the bounden duty of this Court to do so

2 (2014) 2 SCC 576.

3 (2014) 7 SCC 640.

and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation". While affirming the divorce, the apex court awarded Rs. 25,00,000/- which would be paid by the respondent husband for the educational expenses of the minor child. The divorce should not absolve the father of his liability.

The apex court had to answer the question, "Whether a decree of divorce granted by the trial court could be converted as a judicial separation by the high court" in *Mitul Chatterjee* v. *Rajesh Burman.*[4] In the instant case, the parties had come to amicable settlement to dissolve the marriage. Both parties agreed that no legal matter is pending between them and they have no cross claims against each other. In such facts situations, by allowing the appeal, the apex court set aside the high court's order of judicial separation and restored the trial court's decree of divorce.

Filing false criminal complaint constitutes matrimonial cruelty

Through the judgment in *K. Srinivas* v. K. *Sunita*[5] the Supreme Court unequivocally held that filing of false criminal complaint by wife in itself is sufficient to constitute matrimonial cruelty. In *Srinivas,* the respondent wife had knowingly and intentionally filed a false complaint against the appellant husband and seven members of his family after he moved a divorce petition.

Denial of sexual intercourse

No uniform standard can ever be laid down for what amounts to mental cruelty in matrimonial relation. The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, to consider the same as mental cruelty. Various judicial judgments have revealed different illustrations for mental cruelty ranging from indifference to calculated torture. *Vidhya Viswanathan* v. *Kartik Balakrishnan*[6] establishes that not allowing spouse for long time, to have sexual intercourse by his or her partner, without sufficient reason, itself amounts to mental cruelty to the spouse. Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason amounts to mental cruelty.

III RECOGNITION OF THIRD GENDER - CONSTITUTIONAL AND HUMAN RIGHTS

Transgender (TG) is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex. TG may also takes in persons who do not identify with their sex assigned at birth. In contemporary usage the term is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative transsexual people, who strongly identify with the gender opposite to their biological sex: male and female.

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4 2015 (1) RCR (Civil) 193.

5 2014 (10) SCJ 438.

6 2014 (8) SCJ 497.

National Legal Services Authority v. *Union of India*[7] concerned with the core issue of gender identity. It revealed grievances of the members of TG community who sought a legal declaration of their gender identity than the one assigned to them – male or female – at the time of birth. Their prayer was that non-recognition of their gender identity violates articles 14 and 21 of the Constitution of India. *Hijras*/eunuchs, who also fall in that group, claimed legal status in this case as a third gender with all legal and constitutional protection. The entire case had two aspects:

> (a) Whether a person who is born as a male with predominantly female orientation (or vice-versa), has a right to get himself to be recognized as a female as per his choice moreso, when such a person after having undergone operational procedure, changes his/her sex as well;
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> (b) Whether TG, who are neither males nor females, have a right to be identified and categorized as a 'third gender'?

The issue of TG is not merely a social or medical issue but there is a need to adopt human right approach towards TGs which may focus on functioning as an interaction between a person and their environment highlighting the role of society and changing the stigma attached to them. TGs face many disadvantages due to various reasons, particularly for gender abnormality or physical and mental disability.

The court observed that non-recognition of identity of TGs in various legislations denies them equal protection of law and they face wide-spread discrimination. By recognizing TGs as third gender they would be able to enjoy their human rights to which they are largely deprived for want of recognition. The court considered several international human rights conventions and norms to be significant for the purpose of interpreting gender identity and equality and used them to shed light on the interpretation of the Indian Constitution.

Recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under the Constitution.

With respect to article 14 of the Constitution and TGs, the court held that article 14 does not restrict the word 'person' and its application only to male or female. TGs who are neither male nor female fall within the expression 'person' and, hence, entitled to legal protection of laws in all spheres of state activity, including employment, healthcare, education as well as equal civil and citizenship rights, as enjoyed by any other citizen of this country. Non-recognition of the identity of *hijras*/TGs denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. The court further observed that articles 15(2) to (4) and article 16(4) read with the directive principles of state policy and

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7 (2014) 5 SCC 438.

various international instruments to which India is a party, call for social equality, which the TGs could realize, only if facilities and opportunities are extended to them so that they can also live with dignity and equal status with other genders.

Gender identity lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under article 19(1) (a) of the Constitution of India. A TG's personality could be expressed by the TG's behavior and presentation. State cannot prohibit, restrict or interfere with a TG's expression of such personality, which reflects that inherent personality. The apex court issued the following directions to safeguard constitutional rights of members of TGs:[8]

> (1) Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
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> (2) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
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> (3) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
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> (4) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/Transgenders face several sexual health issues.
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> (5) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.
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> (6) Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
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> (7) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
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> (8) Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.

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8 *Id*. at 456-57.

> (9) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

This decision thus becomes a landmark judgment declaring TG people to be a 'third gender', affirming that the fundamental rights granted under the Indian Constitution will be equally applicable to TG people and giving them the right to self-identification of their gender as male, female or TG. The court referred exhaustively to the various judicial pronouncements and legislations on the international arena to highlight the fact that the recognition of 'sex identity gender' of persons, and 'guarantee to equality and non-discrimination' on the ground of gender identity or expression is increasing and gaining acceptance in international law and thus concluded that the same be applied in India as well.

IV CRUELTY AND DOWRY DEATH

498 A: A weapon or a shield?

In *Arnesh Kumar* v. *State of Bihar*,[9] the apex court lamented that section 498A of the IPC which was as introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives, is in fact now used as weapon rather than shield by disgruntled wives. To ensure that police officers do not arrest accused unnecessarily and magistrates do not authorize detention casually and mechanically, the court gave the following directions:[10]

> (1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;
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> (2) All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)(b)(ii);
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> (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;
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> (4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
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> (5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the

9 (2014) 8 SCC 273.

10 *Id*. at 281.

> case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
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> (6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
>
> (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
>
> (8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

The court also added that the directions aforesaid shall not only apply to the cases under section 498A of the IPC or section 4 of the Dowry Prohibition Act, 1961 but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

Responsibility of the husband towards his wife

Naresh Kumar v. *State of Haryana*,[11] explains why a suicide note should not be treated as conclusive? In *Naresh Kumar*, with respect to dowry death, it was held that a suicide note cannot be treated as conclusive. Mere mention in the suicide note that nobody may be held responsible is not enough to exonerate the appellant husband. The deceased's suicide note clearly showed that she was in helpless condition and she found no other way to come out of situation. There was also plethora of evidence to prove demand of dowry 'soon before death' giving rise to presumption against the appellant. As regards the claim for parity of the case of the appellant husband with his mother and brother who have been acquitted by the high court, the Supreme Court held that "the High Court has rightly found his case to be distinguishable from the case of his mother and brother". The husband is not only primarily responsible for safety of his wife; he is expected to be conversant with her state of mind more than any other relative. If the wife commits suicide by setting herself on fire, preceded by dissatisfaction of the husband and his family from the dowry, the inference of harassment against the husband may be patent. Responsibility of the husband towards his wife is qualitatively different and higher as against his other relatives. Hence the apex court rightly held that the appellant's case could not stand at par with his mother and brother, by way of caution against over implication, as well as for want of cogent evidence against them.

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11 2014 (3) ACR 3495.

Validity of compromise

Section 498A of IPC is non-compoundable. Likewise, section 4 of the Dowry Prohibition Act is also non-compoundable. Therefore, it is not possible to permit compounding of these offences. However, if there is a genuine compromise between husband and wife, criminal complaints arising out of matrimonial discord can be quashed, even if the offences alleged therein are non-compoundable, because such offences are personal in nature and do not have repercussions on the society unlike heinous offences like murder, rape *etc*. However, while considering the request for compounding of offences the court has to strictly follow the mandate of section 320 of the Cr PC. The apex court held in *Manohar Singh* v. *State of Madhya Pradesh*,[12] that even though the appellant and the complainant had arrived at compromise, order of conviction could not be quashed on that ground because offences involved were non-compoundable. In such situation, if the court felt that parties had real desire to bury hatchet in interest of peace, it could still reduce sentence of appellant to sentence already undergone.

Presumption

In *Jagdish* v. *State of Uttaranchal*[13] the court observed that considering the scope of section 304B of IPC and presumption under section 113B of the Evidence Act, due weightage is to be given to the evidence of the father, brother, sister and other relatives of the deceased wife with regard to the case put forth relating to demand of dowry. When the essential ingredient that the victim was subjected to cruelty or harassment in connection with demand for dowry 'soon before her death' is proved, presumption under section 113B of the Evidence Act has to be invoked. When such presumption is raised, it is for the accused to rebut the presumption by adducing cogent evidence.

Legality of quashing of summoning order

In *Bhaskar Lal Sharma* v. *Monica*[14] it was held that where a *prima facie* case is made out against the accused under sections 406 and 498A of IPC, the proceedings before the trial court cannot be quashed or interdicted but has to be finally concluded by the trial court.

Whereas in *Swapnil* v. *State of Madhya Pradesh*,[15] the apex court quashed the charges under sections 498A and 506 of IPC and section 4 of the Dowry Prohibition Act, 1961 framed by the judicial magistrate, to secure the ends of justice and for preventing abuse of the process of the criminal court, having found that the allegations of demand for dowry coupled with criminal intimidation were vague and bereft of the details as to the place and the time of the incident.

Interference

In *Ramesh Vithal Patil* v. *State of Karnataka*,[16] the deceased committed suicide within a period of seven years from date of marriage by jumping in river

12 AIR 2014 SC 3649.

13 2014 (4) MLJ (Crl) 763.

14 (2014) 3 SCC 383.

15 (2014) 13 SCC 567.

16 (2014) 11 SCC 516.

along with her ten months old daughter. The trial court has acquitted the accused. However, the high court set aside the acquittal of the appellant husband of offence under section 304B and convicted him for offence punishable under section 306 IPC for three years' rigorous imprisonment. The Supreme Court has to consider the question whether impugned judgment of high court calls for any interference? By answering the question in negative, the apex court held that if in a given case the high court feels that the trial court could never have taken the view it has taken and that it is a perverse view which may result in gross miscarriage of justice, it is not only it's legal obligation but also duty to interfere with such order of acquittal. The high court should not interfere with an order of acquittal because it has power to do so and just because some other view is also possible. The high court must locate some gross error of law or fact and must feel impelled to interfere with the order of acquittal to rectify it. The purpose behind such interference is obviously to prevent miscarriage of justice. The court also observed that the trial court's order acquitting appellant is replete with gross error of facts resulting in miscarriage of justice. In such circumstances, the high court rightly held that other member of appellant's family can be given the benefit of doubt, but the appellant-husband cannot escape liability.

The appeal case of *State of Maharashtra* v. *Rajendra*[17] pertains to the determination of presumption of dowry death under sections 304B, 306 and 498A IPC and section 113A of Evidence Act, 1872. By setting aside the order of acquittal, the Supreme Court ruled that if the prosecution has successfully proved beyond reasonable doubt the guilt for offences of dowry death and cruelty; any acquittal would defeat the ends of justice.

In A.*K. Devaiah* v. *State of Karnataka*,[18] the trial court has acquitted the accused from charges under sections 3, 4 and 6 of Dowry Prohibition Act and sections 304B and 498A of IPC. By reversing the order of acquittal, the high court convicted the accused. The apex court restraining from interference held that the high court has correctly recorded the finding based on evidence and found the appellant guilty of commission of offence.

Similarly, in *Patel Maheshbhai Ranchodbhai* v. *State of Gujarat*,[19] the apex court did not allow reversal of the conviction. The appeal to the Supreme Court had filed against the order of high court which reversed the acquittal ordered by the trial court and convicted the appellants of charges under section 306 and 498A of IPC. Besides dying declaration, there was available evidence on record to prove factum of cruelty and death of deceased. The apex court while confirming the conviction held that the prime duty of the trial court is to appreciate the evidence and convict the wrong doer if the evidence supports the conviction. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil

17 (2014) 12 SCC 496.

18 2014 (4) Crimes 384 (SC).

19 (2014) 14 SCC 657.

trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law.

On the contrary, in *Ramaiah* v. *State of Karnataka*,[20] where the prosecution failed to successfully establish the guilt of accused beyond reasonable doubt, the apex court held that the accused cannot be convicted under sections 3 and 4 of Dowry Prohibition Act, 1961 and sections 176, 201, 304B and 498A of IPC. Though the deceased had died within six months of her marriage and it was unnatural death, there was no demand of dowry by the accused and it was not established that the deceased committed suicide due to demand of dowry and harassment. The apex court, on these circumstances, held that the appellant is not guilty of the charges foisted against him.

Law requires, in cases of alleged dowry death, the prosecution to establish first by cogent evidence that the death in the case occurred within seven years of the marriage.[21] In *Abdul Jabbar* v. *State of Haryana*,[22] nothing has been brought on record by the prosecution to establish that the death has taken place within a period of seven years of date of marriage. On the contrary, the defence has brought acceptable and reliable evidence that the marriage was much prior to seven years. There was really no evidence as regards demand of dowry. Therefore, the apex court held that the demand of dowry cannot be stated to have been made 'soon before the death' of the deceased. On these facts, by setting aside the conviction of the accused –appellants, the apex court reiterated that when the incriminating materials have not been put to the accused under section 313 of Cr PC, it amounts to serious lapse on the part of the trial court to order conviction.

In *Manohar Lal* v. *State of Haryana*[23] by setting aside the order of conviction, the apex court further established that if the statement of complainant against accused in respect of death was general and not specific; and no specific incidence had been indicated suggesting cruelty or harassment made by the accused, then the death cannot be construed as dowry death.

Kishore Chand v. *State of Himachal Pradesh*[24] reaffirms the position of law that in cases of dowry death if there is improper appreciation of evidence or manifest error on record, non-consideration of evidence which have materially affected the verdict, definitely the appellate court has jurisdiction to re-appreciate the evidence and reverse the judgment of acquittal. In this case, the high court had altered the acquittal ordered by trial court and convicted the appellant husband under sections 498A and 306 IPC read with section 34 IPC. By dismissing the appeal, the apex court confirmed the conviction.

The expression 'soon before'

In *Dinesh* v. *State of Haryana*[25] with respect to the expression 'soon before' it was held that the term is a relative term, which is required to be considered

20 (2014) 9 SCC 365.

21 *Baljeet Singh* v. *State of Haryana* (2004) 3 SCC 122.

22 II (2015) CCR 195 (SC).

23 (2014) 9 SCC 645.

24 2014 (4) RCR (Criminal) 980.

25 2014 (5) SCJ 132.

under the specific circumstances of each case and no straight jacket formula can be laid down by fixing any time of allotment. It can be said that the term 'soon before' is synonyms with the term 'immediately before'. The determination of the period which can come within term 'soon before' is left to be determined by courts depending upon the facts and circumstances of each case.

Delay in lodging FIR

The decision in *Raminder Singh* v. *State of Punjab*[26] reiterates that mere delay in lodging FIR should not be fatal to cases under section 304 B of IPC. The case of demand for any property or valuable security, directly or indirectly, which has a nexus with the marriage, would constitute 'demand for dowry'. In the instant case, there was non-stop demand from next day of marriage for dowry as evident from statements of witnesses. The deceased was threatened to be thrown out from the matrimonial home if the demand is not met. Hence, the court concluded that the harassment meted out to the deceased was in connection with the demand of dowry and merely on the ground of some delay (2 days) in lodging the FIR, the case of the prosecution cannot be thrown out.

Quantum of punishment

In *Savarala Sai Sree* v. *Gurramkonda Vasudevarao*[27] while deciding matter on dowry death, the apex court examined the quantum of punishment under section 3 of Dowry Prohibition Act, 1961. The trial court convicted the respondents under section 498A IPC and awarded the sentence of three years. They were also convicted under sections 3 and 4 of the Dowry Prohibition Act, 1961 and were imposed a sentence for a period of 3 months. The high court in its revisional jurisdiction reduced sentence to 4 days. The apex court found it to be hopelessly disproportionate particularly when no mitigating circumstances pointed out by the trial court. As per the apex court, the high court failed in its duty to take up the matter in its revisional power under section 401 read with section 386(e) of the Cr PC and enhance the punishment commensurate to the offence committed by them. In the instant case, the minimum sentence fixed by the legislature is five years. Imposition of sentence is undoubtedly in realm of discretion of court. But unless sentence is found to be grossly inadequate, appellate court would not be justified in interfering with discretionary order of sentence.

However, in *Mahaboob Basha* v. *The State of Karnataka*[28] where the appellant was convicted for offences under sections 323, 498A, 504 and 506 IPC, the apex court by considering family and social responsibilities of the appellant reduced the 6 months' imprisonment imposed by the courts below to the period already undergone (one month).

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26 (2014) 12 SCC 582.

27 (2014) 2 SCC 485.

28 2014 (4) Crimes 518 (SC).

Indecent Representation of Women (Prohibition) Act, 1986

What is the true interpretation of 'obscene' in the contemporary era? The judgment in *Aveek Sarkar* v. *State of West Bengal*[29] answers this question. In *Aveek Sarkar* the court had to examine a complaint against publication of a photograph which aimed to promote love affair leading to a marriage between a white-skinned man and a black skinned woman. As per section 292 IPC, a picture or article shall be deemed to be obscene (i) if it is lascivious (ii) it appeals to the prurient interest and (iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter alleged to be obscene. According to the court in the given case, only those sex-related materials which have a tendency of exciting lustful thoughts can be held to be obscene. The court held that while judging as to whether a particular photograph, an article or book is obscene, regard must be had to the contemporary mores and national standards and not the standard of a group of susceptible or sensitive persons.

Presumption under section 113A of the Evidence Act

In *Mangat Ram* v. *State of Haryana*[30] it was held thus:[31] The mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her to cruelty, the presumption as defined under section 498A may attract, having regard to all other circumstances of the case, that such suicide has been abetted by her husband or by such relative of her husband. The presumption under section 113A is discretionary and the court can consider the nature of cruelty to which the woman was subjected to, having regard to the meaning of the word 'cruelty' in section 498A of IPC. The term "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary. The court also observed that the reasoning of the high court that no prudent man will commit suicide unless abetted to do so by someone else is a perverse reasoning. It was further held that "the failure of a married person to take his wife along with him to the place where he is posted, would not amount to cruelty leading to abatement of committing suicide by wife".[32]

V RAPE

Attempt to rape

Rape in its definition includes the attempt to rape as well. In *Puran Chand* v. *State of H.P.*,[33] the apex court held that the offence of rape would be held to have

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29 (2014) 4 SCC 257.

30 (2014) 12 SCC 595.

31 *Id*. at 608.

32 *Id*. at 606.

33 (2014) 5 SCC 689.

been proved even if there is an attempt of rape on the woman and not the actual commission of rape. Any contrary approach would render the incorporation of section 114A into the Indian Evidence Act a futile exercise on the part of the legislature which in its wisdom has incorporated the amendment clearly implying and expecting the court to give utmost weightage to the version of the victim of the offence of rape. The court stated that the version of the victim girl who was suffering the trauma of rape and was provoked to take the extreme step of consuming poison, cannot be doubted ignoring even the fact that a girl would put herself to disrepute and go to the extent of supporting her parents to lodge a false case merely due to some enmity with the family of the accused putting her honour at stake in a precarious mental state. Even if there had been a doubt about the medical evidence regarding non rupture of hymen, the same would be of no consequence as it is well-settled principle of criminal law that an attempt of rape on the woman constitutes the very offence of rape.

Legal status of *Fatwa*

In Muslim personal law, *fatwa* stands for legal ruling given by Muslim scholars based on religious evidence. *Vishwa Lochan Madan* v. *Union of India*[34] was a public interest litigation filed by an advocate subsequent to *fatwas* issued in three separate cases. In the first case, Imrana, a 28 years old Muslim woman and mother of five children was allegedly raped by her father-in-law. The question arose about her marital status and those of her children born in the wedlock with rapist's son. The *fatwa* of *Dar-ul-Uloom* issued in this connection dissolved the marriage with perpetual injunction restraining the husband and wife living together, though none of them ever approached the *Dar-ul-Uloom*. In the second case, another *fatwa* was issued to prevent filing of police report against the father-in-law who had allegedly raped one Asoobi. It stated that father-in-law could have been blamed only if there had either been a witness to the case or the victim's husband had endorsed Asoobi's allegation. The third *fatwa* ruled that a 19 year old Muslim woman, Jatsonara, should accept the rapist father-in-law as her 'real' husband and divorce her husband. The PIL petition alleged that these *fatwas* have the support of All India Muslim Personal Law Board and it is striving for the establishment of parallel Muslim judicial system in India. According to the petitioner, adjudication of disputes is essentially the function of sovereign state, which can never be abdicated or parted with. Hence, the petitioner has sought a declaration that the movement/activities being pursued by All India Muslim Personal Law Board and other similar organizations for establishment of Muslim judicial system and setting up of *Dar-ul-Qazas* (Muslim courts) and *Shariat* court in India are absolutely illegal, illegitimate and unconstitutional.

As per the Supreme Court, the decisions of *Dar-ul-Qaza* or the *fatwa* do not satisfy two fundamentals of any legal judicial system:

1. The power to adjudicate must flow from a validly made law.

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34 (2014) 7 SCC 707.

2. Person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequence as provided in law is to ensue.

Therefore, the opinion or the *fatwa* issued by *Dar-ul-Qaza* is not an adjudication of dispute by an authority under a judicial system sanctioned by law. A *Qazi* or *Mufti* has no authority or powers to impose his opinion and enforce his *fatwa* on any one by any coercive method. In fact, whatever may be the status of *fatwa* during Mogul or British rule, it has no place in independent India under the constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the *Dar-ul-Qaza* issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Hence, *Dar-ul-Qazas* and *Nizam-e-Qaza* do not run a parallel judicial system. The *fatwa* has no legal status in the constitutional scheme. The court held thus:

> No Dar-ul-Qazas or for that matter, anybody or institution by any name, shall give verdict or issue Fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of concerned individual. In any event, the decision or the Fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or Fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law.

Certainly, *fatwas* touching upon the rights of an individual may cause irreparable damage and a violation of basic human rights. Religion cannot be allowed to be merciless to the victim or to punish an innocent. Faith cannot be used as dehumanising force.

Category of 'rarest of rare' cases

In *Rajkumar* v. *State of M.P.*,[35] the court held that in spite of the fact that accused has committed a heinous crime of murder and raped an innocent, helpless and defenceless minor girl who was in his custody, it was not a case which falls within a category of rarest of rare. By stating that the accused is liable to be punished severely the court awarded a sentence of 35 years in jail without remission. The

35 (2014) 5 SCC 353.

court also opined that if the accused did not take any defence or furnish any explanation as to any of the placed incriminating material then court has to draw an adverse inference against him.

With reference to the question of awarding death sentence it was also held that penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of crime. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before option is exercised.

The court also opined that if the accused did not take any defence or furnish any explanation as to any of the placed incriminating material then court has to draw an adverse inference against him.

In *Ashok Debbarma* v. *State of Tripura*[36] trial court and high court found the appellant guilty for offences under sections 326, 436 and 302/34 of IPC and awarded death sentence for his involvement in crimes against innocent villagers, who are a linguistic minority, which included women and children. However, the apex court by applying the principles laid down in *Swamy Shradananda (2)* v. *State of Karnataka*,[37] altered death sentence to that of life imprisonment of 20 years without remission.

Compensation and rehabilitation of rape victims

Mohd. Haroon v. *Union of India*[38] unfolds shocking facts involving communal riots, violence, two hundered odd brutal murders, more than 500 cases of missing persons, migration of around 40,000 persons who have been forcibly asked to move out of the village otherwise they would be killed and sheltering of many thousand persons including infants, children, women and elderly who were left without any facilities, food and shelter in various villages. Serious allegations were made against the state police for not providing adequate security to women which resulted in several rapes being committed during the said communal violence. The case also highlighted the inaction on the part of state police against the real culprits and the indifferent attitude towards the victim's rehabilitation and security. The police have knowingly delayed the victims' medical examination. The rape victims hence prayed for protection of their right to life under article 21. Moreover, all the petitioners belong to the minority community who were brutally gang raped and sexually assaulted by men belonging to the other communities during the

36 (2014) 4 SCC 747.

37 (2008) 13 SCC 767.

38 (2014) 8 SCC 913.

communal violence in Muzaffarnagar and adjacent districts. Their homes were destroyed and they were rendered homeless with no roof over their heads, they lost their earnings and it has become difficult for them to take care of their children and themselves. The petitioners also claimed in the petition that the accused are roaming free and enjoying the support of dominant community, khap panchayat, political parties and besides because of their closeness, they are also intimidating the victims. Thus, unless the police give protection to the victims and witnesses, it would be impossible for them to depose against the persons involved in the gang rape. The petitioners also prayed for an inclusive protection for each victim whose fundamental rights were infringed in the said riot by praying for numerous rehabilitative, protective and preventive measures to be adhered to by both the state and the central government.

The apex court with regard to the rape cases directed the special investigation call (SIC) to arrest and produce before the court all the persons concerned within a time-bound manner. They were also directed to record the statement of the victims under section 164 before a lady magistrate. It was also directed that the security cover provided to rape victims as furnished before the apex court shall continue till they desire or completion of the trial whichever is later. The court also awarded compensation of Rs. 5 lakhs each, in addition to various other benefits, by the state government within a period of four weeks to all rape victims. The state was also directed to provide other financial assistance as well as any other scheme applicable to them for their betterment and to continue their normal avocation.

The court also directed the government to formulate and implement policies in order to uplift the socio-economic conditions of women, sensitization of police and other concerned parties towards the need for gender equality which must be done with focus in areas where statistically there is higher percentage of crimes against women.

By awarding the compensation to rape victims the court remarked that no compensation can be adequate nor can it be of any respite for the victims but as the state has failed in protecting such serious violation of fundamental rights, it is duty bound to provide compensation, which may help in victims' rehabilitation. The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation would at least provide some solace. The obligation of the state does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. Considering the mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.

Fast track procedure in rape cases

In *State of Karnataka by Nonavinakere Police* v. *Shivanna @ Tarkari Shivanna*,[39] the Supreme Court expressed its anguish on the fact that though Indian criminal administration system had established fast track courts for expeditious disposal of cases involving the charge of rape at the trial stage, still we do not have

39 *Id*. at 915-16.

a fast track procedure for dealing with cases of rape and gang rape lodged under section 376 IPC with the result that such heinous offences are repeated incessantly. By exercising its powers under article 142 of the Constitution, the Supreme Court issued interim directions in the form of mandamus to all the police station in charge in the entire country to follow the below mentioned direction:[40]

> (i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement Under Section 164 of the Code of Criminal Procedure. A copy of the statement Under Section 164 Code of Criminal Procedure should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement Under Section 164 Code of Criminal Procedure should not be disclosed to any person till charge sheet/report Under Section 173 Code of Criminal Procedure is filed.
>
> (ii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.
>
> (iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.
>
> (iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
>
> (v) Medical Examination of the victim: Section 164A of the Code of Criminal Procedure inserted by Act 25 of 2005 in Code of Criminal Procedure imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim Under Section 164 of the Code of Criminal Procedure.

Considering the consistent recurrence of the heinous crime of rape and gang rape all over the country including the metropolitan cities, the court was of the view that it is high time to introduce measures of reform in the Cr PC.[41]

Reduction of sentence

There must be good and adequate reasons to reduce the sentence to less than the minimum sentence. The legislature requires the court to record the adequate

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40 Also see (2014) 8 SCC 916.

41 (2014) 2 SCC 592.

and special reasons in any given case where the punishment less than the minimum sentence of seven years under section 376(1). What is adequate and special would depend upon several factors on the facts of each case and no straitjacket formula can be laid down by the court. In *Parminder alias Ladka Pola* v. *State of Delhi*[42] the court reaffirmed that punishment should always be proportionate and commensurate to the gravity of offence. In the present case, the prosecutrix was of only fourteen years of age when the incident took place. The court also noted that penetration is sufficient to constitute the sexual intercourse and non-rupture of hymen is not sufficient to dislodge the theory of rape. In the absence of adequate and special reasons to reduce the sentence to less than the minimum sentence the court is obliged to award the minimum sentence.

Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Undue sympathy by means of imposing inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. In *State of Madhya Pradesh* v. *Bablu*[43] the respondent was convicted for offences punishable under sections 323 and 354 of IPC for assault/criminal force to woman with intent to outrage her modesty. The high court has reduced the conviction of six months awarded by the trial court to 21 days period which was already undergone by the respondent. By setting aside the order of the high court, the apex court said that the high court in very casual manner has reduced sentence merely on the ground that the accused was first offender. It is duty of every court to award proper sentence having regard to nature of offence and manner in which it was executed or committed. Sentencing courts are expected to consider all relevant facts and circumstances bearing on question of sentence and proceed to impose sentence commensurate with gravity of offence. Imposition of sentence without considering its effect on social order would be a futile exercise and the accused, who commit such offence, would be emboldened and repeat such crime. The social impact of the crime where it relates to offences against women involving moral turpitude or moral delinquency, which have great impact on social order and public interest, cannot be lost sight of and *per se* require exemplary treatment. Liberal attitude by imposing meagre sentences or taking sympathetic view merely on account of lapse of time in respect of such offences will be counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence in built in the sentencing system.

In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News[44] the apex court awarded interim compensation to rape victims for their rehabilitation. In this case, the apex court initiated *suo motu* proceedings on the basis of a news item about the gang rape of a 20 year old woman pursuant to direction of village panchayat, as punishment for having

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42 (2014) 9 SCC 281.

43 (2014) 4 SCC 786.

44 (2014) 8 SCC 390.

relationship with a man from a different community. After getting report from the district judge and the chief secretary, West Bengal, the court held that the state should take a pro active role in sensitizing the society about crimes against women. The court directed the state to award the victim a minimum compensation of Rs: 5 lakhs for rehabilitation in addition to the already sanctioned amount of Rs: 50,000 by the state.

Juvenile Justice (Care and Protection of Children) *Act, 2000*

Subramanian Swamy v. *Raju through Member Juvenile Justice Board*[45] deals with the most ill famous Nirbhaya case - Delhi gang rape case, 2012. The case demanded an overhauling of criminal justice administration in the country with reference to juvenile delinquents. One of five accused was below 18 years of age on date of commission of crime and as such his case has been referred for inquiry to juvenile justice board. Other accused were tried in regular sessions court. The significant question for determination in the present case was whether offences allegedly committed by juvenile is to be inquired into by juvenile justice board or juvenile is required to be tried in regular criminal court?

It was argued by the appellant that the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, *i.e.,* sections 1(4), 2(k), 2(1) and 7 must be read to mean that juveniles (children below the age of 18) who are intellectually, emotionally and mentally mature enough to understand the implications of their acts and who have committed serious crimes do not come under the purview of the Act. They are liable to be dealt with under the penal law of the country and by the regular hierarchy of courts under the criminal justice system administered in India. It is further urged that if the Act is not read in the above manner the fall out would render the same in breach of article 14 as inasmuch as in that event there would be a blanket/flat categorisation of all juveniles, regardless of their mental and intellectual maturity, committing any offence, regardless of its seriousness, in one homogenous block in spite of their striking dissimilarities.

The apex court held that if the provisions of the Act clearly indicate the legislative intent in the light of the country's international commitments and the same is in conformity with the constitutional requirements, it is not necessary for the court to understand the legislation in any other manner. If the Act is plainly read and understood, the resultant effect thereof is wholly consistent with article 14. The court also observed that classification or categorization need not be the outcome of a mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class. So long as the broad features of the categorization are identifiable and distinguishable and the categorization made is reasonably connected with the object targeted, article 14 will not forbid such a course of action. If the inclusion of all under 18 into a class called 'juveniles' is understood in the above manner, differences *inter se* and within the 'under 18 category' may exist. Article 14 will, however, tolerate the said position. Precision and arithmetical

45 *Supra* note 42.

accuracy will not exist in any categorization. But such precision and accuracy is not what article 14 contemplates. If the Act has treated all under 18 as a separate category for the purposes of differential treatment so far as the commission of offences are concerned, the Supreme Court do not see how the contentions advanced by the petitioners to the contrary on the strength of the thinking and practices in other jurisdictions can have any relevance.

Obligation of hospitals

In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News[46] the apex court held that all hospitals in the country are statutorily obliged under section 357C IPC to provide first aid or medical treatment free of cost to victims of any offence covered under sections 326A, 376, 376A, 376B, 376C, 376D or 376E of IPC.

VI PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Liability for domestic violence at pre-divorce stage

In *Juveria Abdul Majid Patni* v. *Atif Iqbal Mansoori*[47] the court was confronted with the question whether a divorced woman can seek for reliefs against her ex-husband under sections 18 to 23 of the Protection of Women from Domestic Violence Act, 2005 (PWD Act). The court answered the question in affirmative and held that an act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the PWD Act including monetary relief under section 20, child custody under section 21, compensation under section 22 and interim or ex parte order under section 23 of the PWD Act. The FIR was lodged much prior to the alleged divorce between the parties. The sessions judge and high court have failed to notice the fact that FIR was lodged much prior to alleged divorce between parties and erred in holding the petition under section 12 as not maintainable.

The court also held that it is not necessary that relief available under sections 18 to 23 can only be sought for in a proceeding under PWD Act. Any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a civil court and family court, apart from the criminal court, affecting the aggrieved person whether such proceeding was initiated before or after commencement of the PWD Act.

In *Shalu Ojha* v. *Prashant Ojha*,[48] the apex court took note of the following aspects of the PWD Act: While section 23 expressly confers power on the magistrate to grant interim orders, there is no express provision conferring such power on the sessions court in exercise of its appellate jurisdiction. Section 29 provides for an appeal to the court of session against any order passed by the

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46 (2014) 10 SCC 736.

47 (2015) 2 SCC 99.

48 (2015) 1 SCC 19.

magistrate under PWD Act either at the instance of the aggrieved person or the respondent. No further appeal or revision is provided to the high court or any other court against the order of the sessions court under section 29.

In the case under consideration, the has appellant made a complaint under section 12 of the PWD Act. The magistrate in exercise of his jurisdiction granted maintenance to the appellant. Questioning the correctness of the magistrate's order in granting the maintenance of Rs. 2.5 lakhs per month the respondent carried the matter in appeal under section 29 to the sessions court and sought stay of the execution of the order of the magistrate during the pendency of the appeal. Since the respondent did not comply with such conditional order, the sessions court thought it fit to dismiss the appeal. Challenging the correctness of the said dismissal, the respondent carried the matter before the high court. The application for payment of current maintenance was listed before high court which was dismissed as 'not pressed' on representation made by counsel appearing for appellant. In these fact situations, the apex court noted that there is no express grant of power conferred on the sessions court while such power is expressly conferred on the magistrate under section 23. Section 22 authorized magistrate to direct the respondent to pay compensation and damages for injuries including mental torture and emotional distress caused by act of domestic violence. Apart from that, the power to grant interim orders is not always inherent in every court. Such powers are either expressly conferred or implied in certain circumstances. The apex court for the purpose of this appeal presumed that the sessions court does have such power. If such a power exists then it can certainly be exercised by the sessions court on such terms and conditions which in the opinion of the sessions court are justified in the facts and circumstances of a given case. In the alternative, if the sessions court does not have the power to grant interim orders during the pendency of the appeal, the sessions court ought not to have stayed the execution of the maintenance order passed by the magistrate. The apex court also observed that in a matter arising under a legislation meant for protecting the rights of the women, the high court also should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant. The apex court held that if the sessions court did not have power to grant interim orders during pendency of appeal, sessions court ought not to have stayed execution of maintenance order passed one by the magistrate.

VII MISCELLANEOUS

Gender discrimination

In *Charu Khurana* v. *Union of India*,[49] the petitioners' applications for membership for make-up artist were rejected by the respondent-association, since female members were not allowed to work as make-up artists. The court examined the question whether the female artists, who are eligible, can be deprived to

49 (2014) 13 SCC 492.

work in the film industry as make-up man and only be permitted to work as hair dressers, solely because the respondent association, which is controlled by the Trade Unions Act, 1926, has incorporated a clause relating to this kind of classification? Answering the question in negative, the court held that denial of issue of card to work as make-up artists on ground of gender is violative of statutory provisions and constitutional mandate. Gender equality is a fundamental right. When there is violation of gender justice, there is violation of the fundamental rights of gender justice which amounts to clear violation of the rights under articles 14, 15 and 21 of the Constitution.

Acid attacks

The Supreme Court held in *Pooja Bhatia* v. *Vishnu Narain Shivpuri*[50] that throwing acid is serious crime irrespective of the fact whether there was injury or not. The court also set aside the bail granted by the high court to the accused charged under sections 342, 326B and 506 of IPC**.**

Non-interference by the Supreme Court

In *Pooja Abhishek Goyal* v. *State of Gujarat*[51] whatever was legally possible has already been allowed by the lower courts in favour of the petitioner with respect to investigation of her *stridhan* property. Still the petitioner has come up to the Supreme Court by way of this special leave petition malafidely to teach a lesson to the respondent-husband rather than recovery of her *stridhan* property. Hence, the court refused to interfere with the judgment of the high court.

Similarly in *Nishu* v. *Commissioner of Police, Delhi*[52] the apex court found it wholly inappropriate to exercise its jurisdiction under article 32 of the Constitution after being noticed that charge sheet has been filed against all the nine accused and the trial has been commenced. The case concerned with gang rape on a minor girl by several accused persons including a police constable.

Strict adherence to the doctrine of 'rarest of the rare'

Despite of the fact that the appellant husband has brutally killed his wife and two daughters by pouring petrol after locking them inside the car, the apex court did not find the matter fit to fall within the four corners of the principle of 'the rarest of the rare case' in *Amar Singh Yadav* v. *State of UP*.[53] The appellant husband had illicit relation with two women. He committed the cruel and inhuman murder of his wife and daughters since the family has objected to these relationships, *i.e.*, the appellant's lust was the root cause of these murders. This shows that the Indian judiciary in fact places great emphasis on reformative theory of punishment. By setting aside the death sentence, the Supreme Court held thus: The accused Amar

50 (2014) 13 SCC 492.
51 (2014) 6 SCC 404.
52 (2014) 12 SCC 546.
53 (2014) 13 S 443.

Singh Yadav must serve a minimum of 30 years in jail without remissions before consideration of his case for premature release. There is no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society.

VIII CONCLUSION

The rising crime rate against women has made the criminal sentencing by the courts a subject of concern. As observed by the apex court in *Mohd. Haroon*,[54] as a long term measure to curb crimes against women, a large societal change is required via education and awareness. *In Re: Gang-Rape Ordered by Village Kangaroo Court in West Bengal*[55] the court took *suo moto* jurisdiction with reference to offence against woman and issued continuous mandamus for the follow up actions. In *Shivanna* the court expressed the desirability of having a fast track procedure for dealing with cases of rape and gang rape.[56] The court also directed the state to take a pro active role in sensitizing the society about crimes against women. *Mohd. Haroon* v. *Union of India* made it clear that the officers responsible for maintaining law and order, if found negligent, should be brought under the ambit of law irrespective of their status. *Mohd. Haroon* also establishes that the obligation of the state does not extinguish in rape cases on payment of compensation, rehabilitation of victim is also of paramount importance and rehabilitation becomes a must. Nothing more is apt to conclude this survey than the very words of the apex court in *Re: Gang-Rape Ordered by Village Kangaroo Court in West Bengal:* The crimes against women are not only in contravention of domestic laws, but are also a direct breach of the obligations under the international law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the attitude of the people. Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner and the state machinery work in harmony with each other to safeguard the rights of women in our country.

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54 *Supra* note 36.

55 (2014) 2 SCC 751.

56 *Supra* note 37.